

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

SUMMIT CARBON SOLUTIONS LLC)	
)	
Petitioner,)	No. CVCV062900
vs.)	
)	
IOWA UTILITIES BOARD,)	
)	RESISTANCE TO MOTION TO STRIKE
Respondent,)	PRETRIAL DISCLOSURE
)	
and)	
)	
SIERRA CLUB IOWA CHAPTER and)	
OFFICE OF CONSUMER ADVOCATE,)	
)	
Intervenors.)	

Comes now Sierra Club and in support of its Resistance to Motion to Strike Pretrial Disclosure, states as follows:

1. A motion to strike may be filed only to strike improper or unnecessary matter in a pleading. Iowa Rule of Civil Procedure 1.434. Only petitions and answers are pleadings. Iowa Rule of Civil Procedure 1.401. Thus, a motion to strike cannot be used to strike a pretrial disclosure, which is not a pleading. Furthermore, even if Sierra Club's pretrial disclosure were stricken, it would have no substantive effect. The motion does not request any action other than that the disclosure be stricken.

2. Iowa Rule of Civil Procedure 1.500(3), regarding pretrial disclosures, is a discovery rule. As such it is subject to the requirements of discovery procedure. Iowa Rule of Civil Procedure 1.504(3) provides that any request for an order involving discovery must contain a certification that the movant has in good faith personally conferred with other affected parties in an effort to resolve the issue. The OCA's Motion to Strike does not contain any such certification. And since the OCA contends that all

parties in this case are affected by Sierra Club's allegedly late filing of the pretrial disclosure, the OCA was required to confer with all parties.

3. It is not clear what substantive relief the OCA is requesting, so for that reason alone, the motion to strike should be denied. In any event, the Court has wide discretion in responding to a motion regarding discovery. Iowa Rule of Civil Procedure 1.504(1); *Hagenow v. Schmidt*, 842 N.W.2d 661 (Iowa 2014). Generally, courts craft a response that is the least onerous on the nonmoving party that still provides for a just and fair result. Certainly, prejudice to the moving party is the primary factor. In this case, the OCA can show no prejudice. Sierra Club's attorney had a phone conference with Ms. Ryon, the OCA attorney, on June 13 or 14, 2022, for the purpose of coordinating our approach to the July 7 trial. Sierra Club's attorney told Ms. Ryon that he was going to call Geri Huser as a witness and that he would ask Ms. Huser to amplify and clarify the answers to interrogatories provided by the IUB and the IUB's December 16, 2021 Order regarding submission of landowner lists. Both of those documents are well known to the parties in this case and were the focus of the litigation on Sierra Club's motion for summary judgment.

4. Also, as a general matter, Sierra Club does not believe there is any prejudice to any of the parties regarding Sierra Club's pretrial disclosure. As discussed above, the documents identified in the pretrial disclosure are well known to the parties. In fact, Summit has filed a motion asking that the summary judgment record, in which the documents were the primary focus, be admitted as Summit's evidence in the case. Nor would cross-examination of Ms. Huser be broad, as alleged in the OCA's motion. The issue in this case is very narrow, i.e., what procedure the IUB has had for submission of

landowner lists from hazardous liquid pipeline companies. Any questioning of Ms. Huser beyond that narrow subject matter would, of course, be prevented by the Court, and any cross-examination beyond the scope of direct examination would likewise be prevented by the Court. In addition, Sierra Club's attorney sent Jon Tack, IUB's attorney, an e-mail on June 14, 2022, telling him that Ms. Huser would be subpoenaed and the nature of her expected testimony. A copy of that e-mail is attached.

5. It appears that an issue regarding Sierra Club's pretrial disclosure is that the clerk of court for some reason did not docket the document and send to counsel until June 30, 2022, even though the document was filed in June 24, 2022. That is not Sierra Club's fault. But as shown above, there is no prejudice to the parties from that circumstance. Nor is Sierra Club required to serve the pretrial disclosure on other parties other than by the EDMS system. Iowa Rule of Electronic Procedure 16.201(11).

WHEREFORE, based on the foregoing, Sierra Club requests that the Court deny the Motion to Strike Sierra Club's Pretrial Disclosure.

/s/ *Wallace L. Taylor*

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